APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/751,627	12/29/2000	Joseph F. Khouri	062891.0471	2064

7590	06/13/2005

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EXAMINER
WILLETT, STEPHAN F

ART UNIT	PAPER NUMBER
2142	

DATE MAILED: 06/13/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

PTO-90C (Rev. 10/03)

	Application No.	Applicant(s)
Office Action Summary	09/751,627	KHOURI ET AL.
	Examiner	Art Unit	
	Stephan F. Willett	2142	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) FROM
THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed
  after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any
  earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on <u>28 March 2005</u>.

2a)☐ This action is **FINAL**.   2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is
closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-68* is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-68* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All   b)☐ Some * c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage
application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☒ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
    Paper No(s)/Mail Date _____.

4)☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____.

5)☐ Notice of Informal Patent Application (PTO-152)

6)☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC 102

1.   The following is a quotation of the appropriate paragraphs of 35 U. S.C. 102(e) that form

the basis for the rejections under this section made in this Office action:

> (e) the invention was described in a patent granted on an application for patent by another
> filed in the United States before the invention thereof by the applicant for patent, or on an
> international application by another who has fulfilled the requirements of paragraphs (1),
> (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for
> patent.

2.   Claims 1, 14-15, 24, 35, 44, 51, 58 are rejected under 35 U.S.C. 102(e) as being

anticipated by Katseff II et al. with Patent Number 6,301,258.

3.   Regarding claim(s) 1, 14-15, 24, 35, 44, 51, 58, Katseff II teaches a communication

network operable to receive streaming or real time media at a first delivery rate, col. 4, lines 48-

52 and VoIP, col. 1, lines 15-16. Katseff II teaches a memory or buffer coupled to the network

to store media received, col. 4, lines 45-48. Katseff teaches a media rate controller coupled to

memory and the network operable to adjust, change and command the first delivery rate as

"delays", col. 4, lines 38-42, but more specifically "data is played out [delivery rate] of

telephony input buffer[external device] ... buffer manager clocks [commands] the audio data out

at a rate", col. 4, lines 47-49. Katseff II teaches a digital signal processor as A/D converter, col.

3, lines 14-16 and coder/ decoder to convert to audible for a speaker as D/A converter, col. 5,

lines 3-5. Katseff II teaches an output device coupled to memory and an interface to transform

signals appropriately, col. 5, lines 53-55, and the "telephony application implements the

functionality needed to prepare the data [includes files, subfiles, packets, etc.] for transmission

over a packet network", col. 3, lines 33-34. Katseff II teaches the determined rate is determined

at the endpoint device as "buffer manager" and "telephony application", col. 4, lines 45-46.

Claim Rejections - 35 USC 103

4.   This application currently names joint inventors. In considering patentability of the

claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various

claims was commonly owned at the time any inventions covered therein were made absent any

evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out

the inventor and invention dates of each claim that was not commonly owned at the time a later

invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103□

and potential 35 U.S.C. 102(f) or (g) prior art under 35 U.S.C. 103(a).

5.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth
> in section 102 of this title, if the differences between the subject matter sought to be patented and the prior
> art are such that the subject matter as a whole would have been obvious at the time the invention was made
> to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be
> negatived by the manner in which the invention was made.

6.   Claims 67-68 are rejected under 35 U.S.C. 103(a) as being unpatentable over Katseff II et

al. with Patent Number 6,301,258 view of Anandakumar et al. with Patent Number 6,804,244.

7.   Regarding claim(s) 67-68, Katseff II teaches a communication network operable to

receive streaming or real time media at a first delivery rate, col. 4, lines 48-52, and VoIP, col. 1,

lines 15-16. Katseff II teaches a memory or buffer coupled to the network to store media

received, col. 4, lines 45-48. Katseff teaches a media rate controller coupled to memory and the

network operable to adjust, change and command the first delivery rate as "delays", col. 4, lines

38-42, but more specifically "data is played out [delivery rate] of telephony input buffer[external

device] ... buffer manager clocks [commands] the audio data <u>out</u> at a rate", col. 4, lines 47-49.

Katseff II teaches a digital signal processor as A/D converter, col. 3, lines 14-16 and coder/

decoder to convert to audible for a speaker as D/A converter, col. 5, lines 3-5. Katseff II teaches

an output device coupled to memory and an interface to transform signals appropriately, col. 5,

lines 53-55, and the "telephony application implements the functionality needed to prepare the

data [includes files, subfiles, packets, etc.] for transmission <u>over</u> a packet <u>network</u>", col. 3, lines

33-34. Katseff II teaches the determined rate is determined at the endpoint device as "buffer

manager" and "telephony application", col. 4, lines 45-46. Katseff II teaches the invention in the

above claim(s) except for explicitly teaching a network device that is remote. In that Katseff II

operates to buffer and communicate data in a computer network, the artisan would have looked

to the network communication loading arts for details of implementing network loading. In that

art, Anandakumar, a related network communication system, teaches "by adapting transmission

rare ... in VoIP", col. 7, lines 30-31 in order to provide data transmission control.

Anandakumar specifically teaches remote sender rate adjustments, col. 30, lines 3-5. Further,

Anandakumar suggests "adaptive control of source rate", col. 27, lines 24-25 will result from

implementing the adjustments. Thus, it would have been obvious to one of ordinary skill in the

art to incorporate adjustable rate remote devices as taught in Anandakumar into the

communication system described in Katseff II because Katseff II operates with various network

configurations and Anandakumar suggests that optimization can be obtained by specifically

adjusting remote rates. Therefore, by the above rational, the above claims are rejected.

8.   Claims 2-13, 16-23, 25-34, 36-43, 45-50, 52-57, 59-66 are rejected under 35

U.S.C. 103(a) as being unpatentable over Katseff II et al. with Patent Number 6,301,258 view of

Aybay with Patent Number 6,185,221.

9.   Regarding claim(s) 2, 4, 17, 27, 37, 45, 64, Katseff II teaches a communication network

operable to receive streaming or real time media at a first delivery rate, col. 4, lines 48-52, and

VoIP, col. 1, lines 15-16. Katseff II teaches a memory or buffer coupled to the network to store

media received, col. 4, lines 45-48. Katseff teaches a media rate controller coupled to memory

and the network operable to adjust, change and command the first delivery rate as "delays", col.

4, lines 38-42, but more specifically "data is played out [delivery rate] of telephony input

buffer[external device] ... buffer manager clocks [commands] the audio data out at a rate", col.

4, lines 47-49. Katseff II teaches a digital signal processor as A/D converter, col. 3, lines 14-16

and coder/ decoder to convert to audible for a speaker as D/A converter, col. 5, lines 3-5. Katseff

II teaches an output device coupled to memory and an interface to transform signals

appropriately, col. 5, lines 53-55, and the "telephony application implements the functionality

needed to prepare the data [includes files, subfiles, packets, etc.] for transmission over a packet

network", col. 3, lines 33-34. Katseff II teaches the determined rate is determined at the

endpoint device as "buffer manager" and "telephony application", col. 4, lines 45-46. Katseff II

teaches the invention in the above claim(s) except for explicitly teaching a network interface as

Ethernet or commands to reserve an amount of bandwidth. In that Katseff II operates to buffer

and communicate data in a computer network, the artisan would have looked to the network

communication scheduling arts for details of implementing network loading. In that art, Aybay,

a related network communication system, teaches "buffering if incoming and/or outgoing

packets", col. 7, line 46 in order to provide data transmission control. Aybay specifically teaches

"Ethernet", col. 7, lines 11 and "any output channels requested by the channel will be reserved

by the scheduler", col. 14, lines 40-41 "based on the bandwidth capacity of the data link", col. 7,

lines 28 to insure a QOS. Further, Aybay suggests "network traffic control", col. 7, line 47-48

will result from implementing the bandwidth scheduling. Thus, it would have been obvious to

one of ordinary skill in the art to incorporate Ethernet bandwidth reservations as taught in Aybay

into the communication system described in Katseff II because Katseff II operates with various

network communication protocols and QOS and Aybay suggests that optimization can be

obtained by specifically tailoring network traffic based on reservations. Therefore, by the above

rational, the above claims are rejected.

10.   Regarding claim(s) 3, 16, 25, 36, 46, 52, 65, Katseff teaches voice over IP, col. 1, lines

17-18.

11.   Regarding claim(s) 5, Katseff teaches the adjustment specifies a new rate as "slower than

normal rate", col. 5, lines 54-55.

12.   Regarding claim(s) 6, 18, 28, 38, 48, 50, 54, 56, 66, Katseff teaches the media controller

to command adjustment of the first delivery rate based on the status of the memory

determination, col. 5, lines 53-54.

13.   Regarding claim(s) 7, 19, 29, 39, 62, Katseff teaches the media controller increases the

delivery rate when memory is below a threshold, col. 5, lines 53-55.

14.   Regarding claim(s) 8, 20, 30, 40, 49, 55, Katseff teaches the media controller decreases

the delivery rate when memory is above a threshold, col. 6, lines 7-12; col. 7, lines 8-10.

15.   Regarding claim(s) 9, 21, 31, 41, Katseff teaches an output device coupled to memory

and an interface to transform signals appropriately, col. 5, lines 53-55.

16.   Regarding claim 10-11, 23, 33, 43, Anandakumar teaches legacy user controlled

commands via an input device such as a GUI to adjust that rate at which media is being output,

col. 52, lines 44-45.

17.   Regarding claim(s) 12, 22, 26, 32, 42, 47, 53, 59, Katseff teaches an output device

coupled to memory and an interface to transform signals appropriately such as a speaker for

audible sounds, col. 4, line 39.

18.   Regarding claim(s) 13, Katseff teaches the media controller to determine whether the first

delivery rate may be adjusted wherein the rate should not be adjusted if the output will be not

"intelligible", col. 5, lines 66-67, thus operation should be at the first or "normal" delivery rate,

col. 5, lines 30-33.

19.   Regarding claim(s) 34, Katseff teaches the logic is embedded in software as a "program",

col. 3, lines 31-32.

20.   Regarding claim(s) 57, 61, 63, Katseff teaches the determined rate is determined at the

endpoint device as "buffer manager" and "telephony application", col. 4, lines 45-46.

21.   Regarding claim(s) 60, Katseff teaches output device as a telephone col. 1, lines 21-24.

Response to Amendment

1.   Based on the new grounds for rejection the applicants arguments are moot. The broad

claim language used is interpreted on its face and based on this interpretation the claims have

been rejected.

2.   The limited structure claimed, without more functional language, reads on the references

provided. Thus, Applicant's arguments can not be held as persuasive regarding patentability.

3.   Applicant suggests Katseff does not teach rate control and associated command at an "external device", Paper Filed 3/28/05, Page 17, lines 1-20. However, broadly interpreting "external" and the fact "data is played out [delivery rate] of telephony input buffer[external device] ... buffer manager clocks [commands] the audio data out at a rate", col. 4, lines 47-49. In any event, Anandakumar clearly teaches external rate control as does Rate Adaptive DSL (RADSL) standards. Thus, Applicant's arguments can not be held as persuasive regarding patentability.

4.   Applicant suggests Katseff II "merely discloses that the delivery rate must be slower than normal", Paper Filed 3/28/05, Page 21, lines 14-15. However, if there is no rate adjustment then by default the first delivery rate will the "normal" delivery rate. Thus, Applicant's arguments can not be held as persuasive regarding patentability.
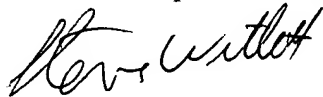

Conclusion

22.   Prior art made of record and not relied upon is considered pertinent to applicant's disclosure is disclosed in the Notice of References Cited. A close review of the Foodeei et al. with Patent Number 6,455,696 and Ptasinski et al. with Patent Number 6US2002/0080886 are suggested. The other references cited teach numerous other ways to modify transmission rates, thus a close review of them is suggested.

5.   Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephan Willett whose telephone number is (571) 272-3890. The examiner can normally be reached Monday through Friday from 8:00 AM to 6:00 PM.

6.   If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, Rupal Dharia, can be reached on (571) 272-3880. The fax phone number for the

organization where this application or proceeding is assigned is (571) 272-0044.

7.   Any inquiry of a general nature or relating to the status of this application or proceeding

should be directed to the receptionist whose telephone number is (571) 272-2100.

Stephan Willett

Patent Examiner

June 8, 2005